

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**STATE OF ALABAMA,**

**Plaintiff,**

**v.**

**ABBOTT LABORATORIES, INC.,  
et al.,**

**Defendants.**

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**Civil Action No.: 2:06cv00920-MHT**

**PLAINTIFF'S MOTION TO STAY  
CONSIDERATION OF  
DEFENDANTS' MOTIONS TO SEVER**

Reserving its objection to the subject matter jurisdiction of this Court, Plaintiff, the State of Alabama, hereby moves this Court to stay the time for filing a response to Defendants' Motions to Sever, and any ruling on said Motions.<sup>1</sup> Plaintiff has filed a Motion to Remand, Supporting Brief and a Motion for Expedited Ruling to have this case summarily remanded back the Circuit Court of Montgomery County, Alabama, for the **second time** where it was originally and properly filed. Plaintiff's Motion to Remand is due to be summarily granted by

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<sup>1</sup> On October 18, 2006, this Court issued an Order demanding that all briefs concerning the five (5) individual Defendants' Motions to Sever be filed no later than November 13, 2006, at which time the Motions would be deemed "submitted." Plaintiff points out that 65 of the 73 Defendants filed similar motions in the Circuit Court of Montgomery County, Alabama, all of which were denied nine (9) business days before Defendants made this second attempt at removal. *See* Order dated September 28, 2006, attached hereto as Exhibit A. The five Motions to Sever at issue here were filed in the state court shortly after the state trial judge issued his order denying the other 65 Defendants' motions. They now seek a second bite at the apple on this severance issue.

this Court because the removal is untimely, the unsealed federal *qui tam* action is not an “other paper” under 28 U.S.C. § 1446(b), and this Court lacks subject matter jurisdiction over the action.

It would be grossly unfair to Plaintiff to be forced to respond to Motions to Sever when this Court has not determined that it even has subject matter jurisdiction. The Plaintiff is confident that once the Court has had an opportunity to review the pleadings in this case, specifically the Plaintiff’s Motion to Remand and Supporting Brief, this Court will summarily remand this case, for the second time, to the Circuit Court of Montgomery County, Alabama, from which it has been improperly removed twice.

On the face of the pleadings in this case, there was not, and currently is not any legitimate ground for removal. Therefore, Plaintiff requests that this Court stay any briefing requirements and any consideration of the Defendants’ Motions to Sever until such time as this Court has determined the issue of subject matter jurisdiction.

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Attorneys for the State of Alabama

**CERTIFICATE OF SERVICE**

I hereby certify that on October 20, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel. I further certify that I have, on this day, served this pleading to counsel of record through the LexisNexis File and Serve system, pursuant to Case Management Order No. 2.

s/ Caine O'Rear III\_\_\_\_\_



Sep 29 2006

9:19AM

2006 SEP 29 AM 11:30

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

v.

ABBOTT LABORATORIES, INC., et al.,

Defendants.

CV-05-219

ORDER

Before the Court are various Motions to Sever and/or Motions for Separate Trials, filed by the majority of Defendants, approximately sixty-five (65) of the seventy-nine (79) Defendants in this case. The Court has met and discussed these issues with both appointed liaison counsel and the appointed Special Masters. The Court has undertaken a review of all of the allegations in the State's Complaint and of all the defenses thereto in this matter. Based on the Court's review of all of the pleadings thus far filed in this case, the Court finds that there are questions of law and facts common to all the parties and that the transactions and occurrences in question all dealt with the Alabama Medicaid Agency, thus in the interest of judicial economy the Court hereby **DENIES** all pending Motions to Sever and/or Motions for Separate Trials.

The Court **ORDERS** liaison counsel and the Special Masters to immediately meet and confer to discuss and attempt to resolve the trial tracking issues of Defendants for the purposes of Trial.

The Court further **ORDERS** that the Special Masters shall set forth a report which recommends the trial tracks of the Defendants, with each track containing ten (10) to fifteen (15) Defendants. The Court shall receive this report no later than October 20, 2006.

The Court once again states that the first Trial in this matter remains set for November 29, 2007. The Court will not entertain requests to continue this Trial.

CHARLES PRICE, CIRCUIT JUDGE

cc: W. Daniel "Dee" Miles, III  
Lee H. Copeland  
Jimmy B. Poole  
Simeon Franklin Penton II

EXHIBIT A